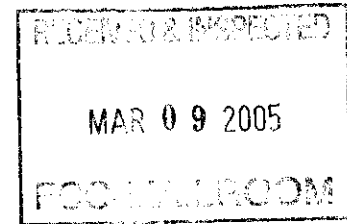


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

**FURTHER NOTICE OF PROPOSED RULEMAKING**

**Adopted: February 10, 2005**

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By the Commission: Chairman Powell, Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

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## I. INTRODUCTION

1. With this Further Notice of Proposed Rulemaking (Further Notice), we begin the process of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies.<sup>1</sup> In the *Inter-carrier Compensation NPRM*, the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and expressed interest in identifying a unified approach to intercarrier compensation.<sup>2</sup> The Commission solicited comment on a bill-and-keep approach to reciprocal compensation payments governed by section 251(b)(5) of the Act.<sup>3</sup> The Commission also sought comment on alternative reform measures that would build upon the current requirements for cost-based intercarrier payments.<sup>4</sup>

2. In response to the *Inter-carrier Compensation NPRM*, the Commission received extensive comment from individual carriers and economists, industry groups and associations, consumer advocates, and state regulatory commissions, among others.<sup>5</sup> The Commission also received numerous *ex parte* filings and considered detailed presentations from interested parties. In addition to the record developed in response to the *Inter-carrier Compensation NPRM*, various industry groups and interested parties recently submitted comprehensive reform proposals and principles for consideration by the Commission in this proceeding.<sup>6</sup>

<sup>1</sup>This examination was initiated in April 2001 by a Notice of Proposed Rulemaking. See *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Inter-carrier Compensation NPRM*).

<sup>2</sup>*Id.* at 9612, para. 2. As the Commission explained in the *Inter-carrier Compensation NPRM*, the existing intercarrier compensation rules may be categorized as follows: access charge rules, which govern the payments that interexchange carriers (IXCs) and Commercial Mobile Radio Service (CMRS) providers make to local exchange carriers (LECs) to originate and terminate long-distance calls; and reciprocal compensation rules, which, generally speaking, govern the compensation between telecommunications carriers for the transport and termination of "local" traffic. *Id.* at 9613, para. 6. Nevertheless, both sets of rules are subject to various exceptions, such as the enhanced service provider (ESP) exemption from the payment of access charges. *Id.*

<sup>3</sup>*Id.* at 9612-13, para. 4.

<sup>4</sup>*Id.*

<sup>5</sup>A complete list of comments and reply comments filed in response to the *Inter-carrier Compensation NPRM* can be found in Appendix A. The Commission received 75 comments and 62 reply comments. See Appendix A.

<sup>6</sup>See *infra* Section II.C.

3. As a general matter, the record confirms the need to replace the existing patchwork of intercarrier compensation rules with a unified approach. Many commenters observe that the current rules make distinctions based on artificial regulatory classifications that cannot be sustained in today's telecommunications marketplace.<sup>7</sup> Under the current rules, the rate for intercarrier compensation depends on three factors: (1) the type of traffic at issue; (2) the types of carriers involved; and (3) the end points of the communication.<sup>8</sup> These distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions. The record in this proceeding makes clear that a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition. Additional problems with the existing intercarrier compensation regimes result from changes in the way network costs are incurred today and how market developments affect carrier incentives. These developments and others discussed herein confirm the urgent need to reform the current intercarrier compensation rules.

4. Since the Commission adopted the *Inter-carrier Compensation NPRM* acknowledging the need for reform, several industry groups have developed proposals for comprehensive reform of existing intercarrier compensation regimes and submitted those proposals to the Commission. In this *Further Notice*, we solicit comment on these proposals, including the legal and economic bases for these proposals, as well as the end-user effects and universal service issues implicated by them. We also ask parties to comment on whether and how these reform proposals would affect network interconnection and seek comment on the implementation issues associated with any reform measures. In addition to the comprehensive reform proposals submitted in the record, we seek comment on alternative reform measures, including changes to the existing intercarrier compensation regimes and cost standards. Finally, we seek comment on issues relating to the regulation of transit services and additional CMRS compensation issues.

## II. FURTHER NOTICE OF PROPOSED RULEMAKING

### A. The Need For Reform

#### 1. Introduction

5. As the Commission explained in the *Inter-carrier Compensation NPRM*, interconnection arrangements between carriers are currently governed by a complex system of intercarrier compensation mechanisms that distinguish among different types of carriers and different types of services based on regulatory classifications.<sup>9</sup> Federal and state access charge rules govern the payments that interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers make to local exchange carriers (LECs) that originate and terminate long-distance calls, while the reciprocal compensation rules established under section 251(b)(5) of the Act generally govern the compensation between

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<sup>7</sup>See, e.g., Allegiance Comments at 7, 11-12; ALLTEL Comments at 6-7; Cable & Wireless Comments at 8; CompTel Comments at 8; Global NAPs Comments at 7; AT&T Reply at 1, 5-6.

<sup>8</sup>For instance, a long-distance call carried by an IXC is subject to a different regime than a local call carried by two LECs. Moreover, CMRS providers and LECs are subject to different intercarrier compensation rules, and ISP-bound calls are subject to yet another regime.

<sup>9</sup>*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9613, para. 5.

telecommunications carriers for the transport and termination of calls not subject to access charges.<sup>10</sup> These rules apply different cost methodologies to similar services based on traditional regulatory distinctions that may have no bearing on the cost of providing service and many of which are increasingly difficult to maintain. In this section, we briefly describe the existing intercarrier compensation mechanisms and then explain why these mechanisms are difficult to sustain in the current marketplace.

**a. Access Charges**

6. Prior to the AT&T divestiture in 1984, most telephone subscribers obtained local services from the Bell Operating Companies (BOCs) and long-distance services from AT&T Long Lines, both of which were owned and operated by AT&T.<sup>11</sup> In preparation for divestiture, the Commission in 1983 established a formal system of tariffed access charges.<sup>12</sup> These rules apportioned charges for common line costs between a monthly flat-rated subscriber line charge (SLC) assessed on end users and a per-minute carrier common line (CCL) charge assessed on the IXCs, which ultimately was recovered from end users through long-distance charges.<sup>13</sup> The SLC for residential users was capped at \$3.50 and any remaining common line costs were recovered through the CCL charge.<sup>14</sup> Switching costs were recovered through per-minute charges assessed on IXCs.<sup>15</sup> The Commission required that these access

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<sup>10</sup>See 47 C.F.R. § 51.701. Intrastate access charges, and intrastate calling generally, are governed by state public utility commissions. Thus, different intercarrier compensation regimes apply to a call originating in New York City depending on, for example, whether it terminates in New York City, elsewhere in the state of New York, or in another state. Different rules also apply depending on whether the calling and called parties are using wireline or wireless services.

<sup>11</sup>*MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241 (1983 *Access Charge Order*), recon., *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682 (1983) (*First Reconsideration of 1983 Access Charge Order*), second recon., *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 834 (1984) (*Second Reconsideration of 1983 Access Charge Order*).

<sup>12</sup>*1983 Access Charge Order*, 93 FCC 2d at 245-54, paras. 9-35.

<sup>13</sup>Although the access charge regime adopted in 1983 and contained in the Commission's Part 69 access charge rules includes charges that LECs impose on their subscribers, in this item we generally use the term "access charges" to mean charges imposed by a LEC on another carrier.

<sup>14</sup>*Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 15999, para. 37 (1997) (*Access Charge Reform Order*) (subsequent history omitted). The Commission emphasized that its long range goal was for LECs to recover a large share of their non-traffic sensitive common line costs on a flat-rated basis from end users instead of from carriers. *1983 Access Charge Order*, 93 FCC 2d at 264-65. The Commission found that a subscriber who does not use the subscriber line to place or receive interstate calls imposes the same non-traffic sensitive costs as a subscriber who does use the line. Thus, simply by requesting telephone service, the subscriber causes the carrier to incur local loop costs whether he or she uses the service for intrastate or interstate calls or not at all. *Id.* at 278. Initially, the residential SLC was capped at \$1.00. The cap was raised to \$3.50 on April 1, 1989. See *Federal Communications Commission Releases Study on Telephone Trends*, Industry Analysis and Technology Division, Wireline Competition Bureau, at Tab 1.1 (rel. May 6, 2004) (*Telephone Trends Report*).

<sup>15</sup>*Access Charge Reform Order*, 12 FCC Rcd at 16006, para. 61.

charges be calculated based on the average embedded cost of providing such services.<sup>16</sup>

7. At that time, the Commission acknowledged that enhanced service providers (ESPs) were among a variety of users of LEC interstate access services.<sup>17</sup> Since 1983, however, the Commission has exempted ESPs, now known as information service providers (ISPs), including those that provide service related to the Internet, from the payment of certain interstate access charges.<sup>18</sup> Rather, ISPs are treated as end users for the purpose of applying access charges and are entitled to pay local business rates for their connections to LEC central offices.<sup>19</sup>

8. In the 1996 Act, Congress sought to foster competition in the local telephone market, while at the same time ensuring the continued provision of affordable service to all Americans.<sup>20</sup> Following its passage, the Commission commenced reform of both interstate access charges and federal universal service support mechanisms in accordance with directives of the Act. In its 1997 *Access*

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<sup>16</sup>See generally 1983 *Access Charge Order*, 93 FCC 2d at 241; *First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 682; *Second Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 834.

<sup>17</sup>*First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 711 (ESPs are “[a]mong the variety of users of access service” and “obtain[ ] local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit [their] location and, commonly, another location.”). The Commission defines “enhanced services” as “services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.” 47 C.F.R. § 64.702(a). The 1996 Act describes these services as “information services.” See 47 U.S.C. § 153(20) (“information service” refers to the “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11516 (1998) (*Universal Service Report to Congress*) (the “1996 Act’s definitions of telecommunications service and information service essentially correspond to the pre-existing categories of basic and enhanced services”).

<sup>18</sup>This policy, known as the “ESP exemption,” has been reviewed by the Commission on a number of occasions and retained each time. See *First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); see also *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*) (“the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired”); *Access Charge Reform Order*, 12 FCC Rcd at 16133-35, paras. 344-48 (“[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry”).

<sup>19</sup>*ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. See also *Access Charge Reform Order*, 12 FCC Rcd at 16133-35, paras. 344-48.

<sup>20</sup>47 U.S.C. §§ 217, 254. Traditionally, rates for local telephone service in rural and high cost areas had been implicitly subsidized by charging high-volume long-distance callers and urban residents artificially higher rates. The 1996 Act recognized, however, that these implicit subsidies could not continue in a competitive marketplace and directed the Commission to create explicit universal service support mechanisms that are specific, predictable and sufficient. See 47 U.S.C. § 254(e); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

*Charge Reform Order*, the Commission reformed the manner in which price cap LECs recover access costs by aligning the rate structure more closely with the manner in which costs are incurred.<sup>21</sup> Accordingly, the Commission began phasing out per-minute charges for loop and other non-traffic sensitive costs, and providing for recovery of such costs through flat monthly charges.<sup>22</sup>

9. The *CALLS Order* continued the process of access charge and universal service reform for these carriers through a more straightforward, economically rational common line rate structure.<sup>23</sup> These reforms advanced the goals of requiring price cap LECs to recover their non-traffic sensitive common line costs from end users, instead of carriers, and of recovering these costs on a flat-rated, rather than a per-minute, basis.<sup>24</sup> In addition, the Commission approved an immediate \$2.1 billion reduction in per-minute switched access charges, which the *CALLS* interexchange carrier members committed to pass through to their customers.<sup>25</sup> To offset these reductions in per-minute switched access charges, the Commission established a new explicit, portable universal service support mechanism, targeted at \$650 million per year for five years.<sup>26</sup>

<sup>21</sup>See *Access Charge Reform Order*, 12 FCC Rcd at 16007-33, paras. 67-120. In particular, the Commission decided that loop costs should be recovered entirely through flat rates rather than per-minute rates. *Id.* at 16004, para. 54.

<sup>22</sup>*Id.* at 15998, para. 35. In order to reduce per-minute CCL charges, the Commission created the presubscribed interexchange carrier charge (PICC), a flat, monthly charge imposed on IXC's on a per-line basis. *Id.* at 15998-16000, paras. 37-40. The Commission also shifted the cost of line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute Transport Interconnection Charge (TIC). *Id.* at 16035-40, 16073-86, paras. 125-34, 210-43. Line ports connect subscriber lines to the switch in the LEC central office. See *id.* at 16034-35, para. 123.

<sup>23</sup>See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 12991-93, paras. 76-79 (2000) (increasing SLC caps and phasing out the residential and single-line business PICC) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001), *cert. denied, National Association of State Utility Consumer Advocates v. FCC*, 535 U.S. 986 (2002); *on remand, Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order on Remand, 18 FCC Rcd 14976 (2003) (*CALLS Order on Remand*). To compensate for the loss of revenues from the elimination of the PICC, the Commission raised the SLC cap for primary residential and single-line business lines from \$3.50 to \$6.50 over a period of several years. See *CALLS Order*, 15 FCC Rcd at 12974-5, 12991-93, 13004-7, paras. 30, 76-79, 105-112. As promised in the *CALLS Order*, the Commission reviewed the network costs of price cap carriers and determined that the SLC increases should proceed as scheduled. *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Order, 17 FCC Rcd 10868 (2002), *aff'd Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 372 F.3d 454 (D.C. Cir. 2004).

<sup>24</sup>See *1983 Access Charge Order*, 93 FCC 2d at 264-65, 278; see also *Access Charge Reform Order*, 12 FCC Rcd at 16007, para. 67.

<sup>25</sup>*CALLS Order*, 15 FCC Rcd at 13025, paras. 151-52.

<sup>26</sup>*Id.* at 13039, paras. 185-86.

10. In the *MAG Order*, the Commission reformed the interstate access charge and universal service support system for incumbent LECs subject to rate-of-return regulation.<sup>27</sup> As with the *CALLS Order*, these reforms were designed to rationalize the interstate access rate structure by aligning it more closely with the manner in which costs are incurred. The *MAG Order* increased the SLC caps for rate-of-return carriers to the levels established for price cap carriers<sup>28</sup> and eliminated the CCL charge from the common line rate structure as of July 1, 2003, when SLC caps reached their maximum levels.<sup>29</sup>

11. In addition, a new universal service support mechanism, Interstate Common Line Support (ICLS), was implemented to replace the CCL charge beginning July 1, 2002.<sup>30</sup> This mechanism recovers any shortfall between the allowed common line revenue requirement of rate-of-return carriers and their SLC and other end-user revenues, thereby ensuring that changes in the rate structure did not affect the overall recovery of interstate access costs by rate-of-return carriers serving high-cost areas.<sup>31</sup> To reform the local switching and transport rate structure of rate-of-return carriers, the Commission shifted the non-traffic sensitive costs of local switch line ports to the common line category, and reallocated the remaining costs contained in the Transport Interconnection Charge (TIC) to other access rate elements, thus reducing per-minute switched access charges.<sup>32</sup>

#### **b. Reciprocal Compensation**

12. Reciprocal compensation for the transport and termination of telecommunications traffic is governed by sections 251(b)(5) and 252(d)(2) of the Act.<sup>33</sup> Section 251(b)(5) generally governs the

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<sup>27</sup>Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifteenth Report and Order, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Report and Order, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) (*MAG Order*), recon. in part, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, First Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), amended on recon., Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal-State Joint Board on Universal Service, CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003). See also Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

<sup>28</sup>*MAG Order*, 16 FCC Rcd at 19621, para. 15. The *MAG Order* increased the residential and single-line business SLC cap to \$5.00 on January 1, 2002, to \$6.00 on July 1, 2002, and to \$6.50 on July 1, 2003. The multi-line business SLC cap increased to \$9.20 on January 1, 2002. *Id.* at 19634, 19638, paras. 42, 51.

<sup>29</sup>*Id.* at 19642, para. 61.

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at 19642, 19667-73, paras. 61, 128-41.

<sup>32</sup>*Id.* at 19649-61, paras. 76-111.

<sup>33</sup>Section 251(b)(5) imposes on all LECs a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5).

compensation between telecommunications carriers for the transport and termination of calls not subject to access charges.<sup>34</sup> Section 252(d)(2)(A) states that, for the purpose of incumbent LEC compliance with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions: (i) provide for the “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier;” and (ii) “determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>35</sup>

13. Current Commission rules require the calling party’s LEC to compensate the called party’s LEC for the additional costs associated with transporting a call subject to section 251(b)(5) from the carriers’ interconnection point to the called party’s end office, and for the additional costs of terminating the call to the called party.<sup>36</sup> The rules further require that the charges for both transport and termination must be set at forward-looking economic cost.<sup>37</sup> The Commission concluded that the “additional cost” standard of section 252(d)(2) permits the use of the same Total Element Long Run Incremental Cost (TELRIC) standard that it established for interconnection and unbundled elements.<sup>38</sup> The TELRIC cost standard establishes prices based on the average cost of providing a particular function.<sup>39</sup>

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<sup>34</sup>See 47 C.F.R. § 51.701.

<sup>35</sup>47 U.S.C. § 252(d)(2)(A). Section 252(d)(2)(B) further provides that the language in section 252(d)(2)(A) shall not be construed “to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)” or to authorize the Commission or any state to “engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.” 47 U.S.C. § 252(d)(2)(B)(i)-(ii).

<sup>36</sup>47 U.S.C. § 252(d)(2)(A); 47 C.F.R. § 51.701. See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16024-25, paras. 1056-59 (1996) (subsequent history omitted) (*Local Competition First Report and Order*). Section 51.701(c) of our rules defines transport as “the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.” 47 C.F.R. § 51.701(c). Section 51.701(d) of our rules defines termination as “the switching of telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.” 47 C.F.R. § 51.701(d). In the *Local Competition First Report and Order*, the Commission also concluded that “the new transport and termination rules should be applied to LECs and CMRS providers.” *Local Competition First Report and Order*, 11 FCC Rcd at 16016-17, para. 1043.

<sup>37</sup>47 C.F.R. § 51.705. See also *Local Competition First Report and Order*, 11 FCC Rcd at 16054-58, paras. 1111-18.

<sup>38</sup>*Local Competition First Report and Order*, 11 FCC Rcd at 16023, para. 1054.

<sup>39</sup>See *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, 18953, para. 18 (2003), Erratum, 18 FCC Rcd 20265 (2003) (“*TELRIC NPRM*”).

14. In the *Local Competition First Report and Order*, the Commission identified the wireline network costs that are recoverable through reciprocal compensation rates.<sup>40</sup> Specifically, the Commission concluded that “[f]or the purposes of setting rates under section 252(d)(2), only that portion of the forward-looking, economic cost of the LEC’s end-office switching that [is] usage sensitive constitutes an ‘additional cost’ to be recovered through termination charges.”<sup>41</sup> The Commission also concluded that the “additional costs” incurred when terminating a call were likely to be greater when termination involved the use of an incumbent LEC’s tandem switch.<sup>42</sup> The Commission found that the higher rate for tandem switching would be available to carriers other than incumbent LECs if those carriers utilize a switch that serves a geographic area comparable to that served by the incumbent LEC’s tandem switch.<sup>43</sup> In the *CMRS Termination Compensation Order*, the Commission affirmed that a carrier is entitled to the tandem interconnection rate under section 51.711(a)(3) of the Commission’s rules if it can satisfy a comparable geographic area test and need not also satisfy a functional equivalency test.<sup>44</sup>

## 2. The Current Inter-carrier Compensation Regimes Cannot Be Sustained in the Developing Marketplace

### a. Introduction

15. The record in this proceeding shows that the three basic principles underlying our existing inter-carrier compensation regimes must be re-examined in light of significant market developments since the adoption of the access charge and reciprocal compensation rules. First, our existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services. As the Commission observed in the *Inter-carrier*

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<sup>40</sup>*Local Competition First Report and Order*, 11 FCC Rcd at 16024-25, para. 1057. In the *Local Competition First Report and Order*, the Commission permitted carriers to receive compensation only for “the traffic-sensitive components of local switching,” and not for local loop costs, which it concluded were not considered traffic-sensitive. *Id.*

<sup>41</sup>*Id.* By contrast, the Commission did not address at that time the traffic sensitive costs of wireless network components that are appropriately recovered through reciprocal compensation rates. The Commission recently clarified the application of these rules to CMRS providers, however. See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood, Chief, Common Carrier Bureau, to Charles McKee, Senior Attorney, Sprint PCS, CC Docket Nos. 95-185 and 96-98, and WT Docket No. 97-207, 16 FCC Rcd 9597 (2001) (“Joint Letter”), affirmed, *Cost-Based Terminating Compensation for CMRS Providers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, CC Docket Nos. 95-185 and 96-98, and WT Docket No. 97-207, Order, 18 FCC Rcd 18441 (2003) (“*CMRS Termination Compensation Order*”), appeal filed, *SBC Communications v. FCC*, Case No. 03-4311 (3d Cir. filed Nov. 3, 2003). It determined that a CMRS carrier is entitled to receive reciprocal compensation for the additional costs of terminating traffic on its network at a rate exceeding the incumbent LEC rate if it can demonstrate that its termination costs exceed those of the incumbent LEC and that those costs are traffic-sensitive. *CMRS Termination Compensation Order*, 18 FCC Rcd at 18445, paras. 8-9; Joint Letter, 16 FCC Rcd at 9598.

<sup>42</sup>*Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

<sup>43</sup>*Id.*

<sup>44</sup>*CMRS Termination Compensation Order*, 18 FCC Rcd at 18447-49, paras. 17-21; Joint Letter, 16 FCC Rcd at 9599 (citing *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105).

*Compensation NPRM*, regulatory arbitrage arises from different rates that different types of providers must pay for essentially the same functions.<sup>45</sup> Our current classifications require carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis.<sup>46</sup> These artificial distinctions distort the telecommunications markets at the expense of healthy competition.<sup>47</sup> Moreover, the availability of bundled service offerings and novel services blur the traditional industry and regulatory distinctions that serve as the foundation of the current rules.<sup>48</sup>

16. Second, our existing compensation regimes are predicated on the recovery of average costs on a per-minute basis. Under average cost pricing, a network can invest in facilities to attract subscribers and recover a share of those costs from subscribers choosing competing networks. As competition has increased, the ability to shift costs to competitors through intercarrier charges increasingly distorts the competitive process. In addition, advancements in telecommunications infrastructure affect the way carrier costs are incurred and call into question the use of per-minute pricing.

17. Third, under the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call.<sup>49</sup> Thus, as a general matter, our existing regimes are based on a "calling-party-network-pays" (CPNP) approach to compensation. Developments in the ability of consumers to manage their own telecommunications services undermine the premise that the calling party is the sole cost causer and should be responsible for all the costs of a call. As discussed below, we find that all these developments compel the Commission to move toward a new, unified intercarrier compensation regime that is better suited to a market characterized by competition among multiple types of carriers and technologies.

#### **b. Developments in Service Offerings**

18. The telecommunications marketplace has changed dramatically since the Commission

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<sup>45</sup>*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 12.

<sup>46</sup>See, e.g., AOL Comments at 2-3; Global NAPs Comments at 7; Level 3 Comments at 25-26. For instance, a LEC providing terminating access service may charge an IXC ten or more times the reciprocal compensation rate it charges another LEC to provide the same transport and termination service for similar traffic. AT&T Comments at 12. There is an even greater difference for originating traffic, where not only is the rate different, but the direction of payment is different as well.

<sup>47</sup>As AT&T observes in its comments, "[t]he existing patchwork of rules -- under which a local exchange carrier's charges for use of the same facilities in the same manner can vary by an order of magnitude or more based upon such economically irrelevant considerations as the identity or status of the interconnecting carrier or the called party -- is wholly incompatible with the competitive environment Congress envisioned." AT&T Comments at 1. AT&T goes on to state that inappropriate intercarrier charges create barriers to entry, tilt the competitive playing field, and distort investment and use. *Id.*

<sup>48</sup>For instance, the Commission has struggled to determine the appropriate regulatory regime for Internet traffic. See *ISP Remand Order. Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9161-62, paras. 18-20 (2001) (*ISP Remand Order*), remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert. denied, 538 U.S. 1012 (2003). In this proceeding, the Commission hopes to address the compensation regime for all types of traffic, including ISP-bound traffic.

<sup>49</sup>See *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9614-15, para. 9.

adopted the existing intercarrier compensation regimes. For instance, most wireless services were not widely available in the 1980s, when the Commission adopted the access charge regime, and wireless services were only beginning to gain a foothold in the market in 1996. Today, there are at least 160 million wireless subscribers and the numbers continue to increase.<sup>50</sup> Due in part to the Commission's deregulatory approach to these services, wireless providers were able to offer bundled local and long-distance packages, and the availability of these bundled packages contributed to the astounding growth of wireless services.

19. Prior to 1996, most wireline carriers were limited to providing a single type of service, such as local or long-distance. The 1996 Act fundamentally changed the telecommunications marketplace by opening all market segments to competition and by lifting existing restrictions on the provision of specific services by some classes of carriers.<sup>51</sup> It is undisputed that carriers are taking advantage of the competitive opportunities presented by the 1996 Act.<sup>52</sup> These legal and regulatory changes enable carriers to offer a broad range of services to their customers, including flat-rated "bundles" of two or more services.<sup>53</sup> Carriers such as Verizon, MCI, and AT&T now offer unlimited local, long-distance, and other services in one flat-rated service package.<sup>54</sup> These offerings, which from

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<sup>50</sup>See *Telephone Trends Report* at Table 11.1 (showing 160 million wireless subscribers as of December 2003). Nationwide, mobile wireless telephone subscribers increased six percent during the first six months of 2003, from 138.9 million to 147.6 million. *Federal Communications Commission Releases Data on Local Telephone Competition*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 1 (rel. Dec. 22, 2003) (*Local Competition Report*). For the full twelve-month period ending June 30, 2003, the number of mobile wireless subscribers increased 13 percent. *Id.* See also Cellular Telecommunications Industry Association, Survey (visited April 22, 2004) <[http://www.wocom.com/pdf/CTIA\\_Semiannual\\_Survey\\_YE2003.pdf](http://www.wocom.com/pdf/CTIA_Semiannual_Survey_YE2003.pdf)> (indicating that as of December 2003, the number of national subscribers was approximately 158,721,981).

<sup>51</sup>See generally *Local Competition First Report and Order*, 11 FCC Rcd at 15505-07, paras. 1-5 (1996) (discussing the competitive changes contemplated by the 1996 Act).

<sup>52</sup>For instance, as of June 2003, competitive local exchange carriers (LECs) provided 14.7 percent of the nationwide local telephone lines that were in service to end users. See *Telephone Trends Report* at 1. Moreover, the Bell Operating Companies (BOCs) are now able to provide in-region long-distance services in all 50 states and the District of Columbia. *Federal Communications Commission Authorizes Qwest To Provide Long Distance Service in Arizona – Bell Operating Companies Long Distance Application Process Concludes, Entire Country Authorized for "All Distance" Service*, WC Docket No. 03-194, FCC News, at 2 (rel. Dec. 3, 2003). The BOCs did not require such authorization in Alaska and Hawaii.

<sup>53</sup>See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of the Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3808-09, para. 133 (2002) (observing that carriers increasingly bundle telecommunications services, such as flat-rate packages that include both local and long distance services) (*Universal Service et al. Further Notice*).

<sup>54</sup>For instance, Verizon offers "Verizon Freedom Packages," which include unlimited local and regional calls, unlimited long-distance calls across the U.S. and Canada, five call features (such as Caller ID and Voice Mail), and DSL service and wireless. See Verizon, Verizon Freedom Packages (visited Dec. 21, 2004) <<http://www22.verizon.com/foryourhome/sas/FreedomLongDesc.asp?ID=10008&state=DC&NPA=&NXX=&Track>> (continued....)

the customer's perspective do not distinguish between local and long-distance service, are dramatically different than the retail offerings that existed prior to the 1996 Act.

20. In addition to competitive developments within the wireless and wireline sectors, the advent of voice-over-internet protocol (VoIP) technology has introduced another mass market alternative to traditional fixed telephone service. New entrants, such as Vonage, have initiated VoIP services in recent years, and a number of other service providers, including Qwest, Verizon, and a number of cable operators, have begun to use or will soon use Internet protocol to provide voice services.<sup>55</sup> These developments have raised a number of regulatory issues for the Commission to resolve.<sup>56</sup>

21. These bundled offerings and novel services blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing compensation regimes. Moreover, in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications. For instance, if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers.<sup>57</sup>

22. Even if there were economic or technical differences among the different types of services that warranted different termination rates, the increased use of alternative services makes it difficult to sustain current regulatory distinctions. Technological alternatives to POTS service that are not tied to a geographic location, such as wireless services and some IP-based services, make regulatory

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ID=VF>. Verizon states that, as of year-end 2003, 48 percent of Verizon residential customers purchased local services in combination with either Verizon long-distance or Verizon DSL, or both. Verizon, Verizon Reports Solid Overall Fourth-Quarter and Year-End Results, Based on Strong Fundamentals, News Release dated Jan. 29, 2004. (visited Dec. 21, 2004)

<[http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=83519&PROACTIVE\\_ID=cecdc9cecbcbcac8c6c5cecfcf5cecec9c9c8cbc9ccc8cbc5cf](http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=83519&PROACTIVE_ID=cecdc9cecbcbcac8c6c5cecfcf5cecec9c9c8cbc9ccc8cbc5cf)>. In addition, an MCI offering entitled The Neighborhood gives customers unlimited local, long-distance and high speed Internet service for one monthly fee. See MCI, MCI The Neighborhood – Home Page (visited Dec. 21, 2004)

<[http://consumer.mci.com/TheNeighborhood/res\\_local\\_service/jsps/default.jsp](http://consumer.mci.com/TheNeighborhood/res_local_service/jsps/default.jsp)>. AT&T's One Rate USA and Unlimited Plus plans offer unlimited local and long-distance. See AT&T, Compare AT&T Calling Plans (visited Dec. 21, 2004) <<http://www.shop.att.com/plancomparison/#datatable>>.

<sup>55</sup>See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4871-73, para. 10 & n.39 (2004) (*IP-Enabled Services NPRM*).

<sup>56</sup>For instance, the Commission recently initiated a rulemaking proceeding to consider the appropriate regulatory treatment of VoIP services. See generally *id.* See also, e.g., *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, para. 14 (rel. Nov. 12, 2004) (preempting an order of the Minnesota Public Utilities Commission on the basis that the IP-based service at issue could not be separated into interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme and that permitting state regulation would thwart federal law and policy); *Pleading Cycle Established for Petition of Level 3 for Forebearance from Assessment of Access Charges on Voice-Embedded IP Communications*, WC Docket No. 03-266, Public Notice, DA 04-1 (rel. Jan. 2, 2004) (seeking forbearance from the application of access charges to IP-PSTN traffic).

<sup>57</sup>See *ISP Remand Order*, 16 FCC Rcd at 9154-55, para. 5.

distinctions based on jurisdiction difficult to enforce. Combined with other developments, such as our recent decision requiring wireline-wireless (intermodal) local number portability,<sup>58</sup> the availability of these alternatives makes it difficult to identify the geographic end points of a call using telephone numbers.<sup>59</sup> Further, as one commenter notes, services provided via the Internet “neither respect nor reflect most of the traditional boundaries and classifications of service used to define regulatory status.”<sup>60</sup> As the demand for these new services and offerings continues to grow, so will the challenges associated with determining the appropriate intercarrier compensation for this traffic under our current rules.

### c. Developments in Telecommunications Infrastructure

23. Another consideration is how the telecommunications infrastructure has developed, which affects the way carrier costs are incurred and recovered under the intercarrier compensation regimes. Our existing compensation regimes are based largely on the recovery of switching costs through per-minute charges.<sup>61</sup> In a separate rulemaking before the Commission,<sup>62</sup> however, a number of carriers argue that a substantial majority of switching costs do not vary with minutes-of-use (MOU). MCI argues, for example, that vendor contracts for switches establish per-line prices, rather than per-minute prices, and thus LECs do not incur switching costs on a per-minute basis.<sup>63</sup> Similarly, AT&T argues that switches generally have excess capacity so that increases in usage do not increase the cost of a switch.<sup>64</sup> In addition, the overall capacity of telecommunications networks has increased dramatically due to the increased deployment of fiber optic facilities.<sup>65</sup> It appears, therefore, that most network costs,

<sup>58</sup>See *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd at 23698, para. 1(2003) (*CTIA Number Portability Order*).

<sup>59</sup>Telecommunications carriers typically compare the telephone numbers of the calling and called party to determine the geographic end points of a call, which may be relevant for jurisdiction and compensation purposes. See *Starpower Communications, LLC v. Verizon South Inc.*, EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625, 23633, para. 17 (2003).

<sup>60</sup>ALLTEL Comments at 6.

<sup>61</sup>See *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9618, para. 17 (discussing rate structure issues raised by the existing intercarrier compensation regulations).

<sup>62</sup>See *TELRIC NPRM*, 18 FCC Rcd at 18945.

<sup>63</sup>*Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Comments of MCI, at 30 (filed Dec. 16, 2003) (MCI TELRIC Comments).

<sup>64</sup>*Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Comments of AT&T, at 73-76 (filed Dec. 16, 2003) (AT&T TELRIC Comments).

<sup>65</sup>See Fred Donovan, *Carrier Fiber-Optic Spending to Top \$24B in 2004*, Vol. 21, Issue 4, Fiber Optic News (2001) (noting the findings of a study done by the Telecommunications Industry Association (TIA) concluding that fiber-optic deployment by incumbent LECs doubled in 2000 and that deployment by competitive LECs rose 23.2 percent); *Despite Fears, fiber-optic deployment continues to increase (Industry Trend or Event)*, Vol. 18, Issue 6, Lightwave (2001) (citing the TIA report findings that fiber miles deployed by carriers grew 168.7 percent in 2000, compared to 55.7 percent in 1999).

including switching costs, result from connections to the network rather than usage of the network itself.<sup>66</sup> This development in infrastructure calls into question whether intercarrier compensation mechanisms based on per-minute charges remain appropriate or necessary.<sup>67</sup>

24. Exacerbating the issue of inefficient rates is the problem of terminating access monopolies. Even when an end user takes service from two providers, e.g., wireless and wireline, the originating carrier must deliver the call to the terminating carrier with the telephone number dialed by the calling party. Other carriers seeking to deliver calls to that end user have no choice but to purchase terminating access from the called party's LEC. Originating carriers generally have little practical means of affecting the called party's choice of access provider, and the called party's LEC may take advantage of the situation by charging excessive terminating rates to a competing LEC. To address the terminating access monopoly problem, the Commission generally has determined that carriers should not be permitted unilaterally to impose termination charges that are not subject to regulation.<sup>68</sup>

**d. Developments in Consumer Control Over Telecommunications Services**

25. Finally, there have been major developments in the ability of customers to manage their telecommunications services. Carriers now offer a number of call screening services that permit customers to block unwanted calls, such as telemarketing calls. Screening services such as caller ID, privacy messages, and non-solicitation messages give customers greater control over the calls they receive.<sup>69</sup> The fact that recipients of calls can and do pay for these services indicates that these customers benefit from receiving calls, and indeed benefit more from receiving some types of calls than others. Moreover, federal agencies and state lawmakers have established "do not call" options for consumers. The Commission recently established a nationwide Do-Not-Call Registry for consumers who

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<sup>66</sup>See *infra* para. 67.

<sup>67</sup>For instance, reciprocal compensation rates often substantially exceed the per-minute incremental cost of terminating a call and therefore create a potential windfall for carriers that serve customers that primarily or exclusively receive traffic. *ISP Remand Order*, 16 FCC Rcd at 9182-83, paras. 68-71; see also *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 11. Because of these inefficient termination charges, the Commission found that some competitive LECs were targeting such customers, particularly ISPs, in order to profit from the one-way flow of traffic. *ISP Remand Order*, 16 FCC Rcd at 9182-83, paras. 68-70; see also *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 38. This reciprocal compensation asymmetry created artificial incentives for entry by LECs intent on serving ISPs. It distorted competition because ISPs were charged rates well below the cost of providing them with service. *ISP Remand Order*, 16 FCC Rcd at 9162, para. 21.

<sup>68</sup>See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001) ("CLEC Access Charge Order") (establishing benchmark rates for CLEC access charges), *recon.*, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262 and CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) (*CLEC Access Charge Recon. Order*); see also *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192 (2002) (allowing CMRS access charges only pursuant to contracts with IXCs).

<sup>69</sup>Qwest Comments at 39.

wish to avoid telemarketing calls.<sup>70</sup> The Do-Not-Call-Registry, which is being implemented in conjunction with the Federal Trade Commission, gives consumers the choice of whether or not to receive telemarketing calls in their homes.

26. This general increase in the ability of customers to manage their telecommunications services has been accelerated by the introduction of IP-enabled services, which provide consumers far greater control over if, how, and when they receive calls.<sup>71</sup> Some IP-enabled telephone services include automated voicemail attendants, call pre-screening, and call forwarding of pre-screened calls.<sup>72</sup> Other services include unified messaging or a unified mailbox that may be accessed by any IP-enabled device. Services such as these permit users to determine the media by which they would like to respond to a given message.<sup>73</sup> As the Commission recently observed, with IP-enabled services, “[e]nd users are likely to enjoy greater and greater flexibility in designing or selecting communications packages that suit their individual needs, and can be expected to access those packages over networks of their choosing, on devices of their choosing.”<sup>74</sup> Thus, IP-enabled services provide many more options for consumers seeking to control how and when they receive telephone calls.

27. This increased ability of consumers to avoid calls for which they may not perceive a benefit (e.g., telemarketing calls) means that they generally will benefit from calls they choose to accept. As a result, we question the assumption underlying our current rules that the calling party is the primary beneficiary of any given call and therefore should bear all the costs of the call.<sup>75</sup> As the Commission observed in the *Intercarrier Compensation NPRM*, it may be more rational to assume that both the calling and called party benefit from any given call.<sup>76</sup> Indeed, for customer choice in a competitive marketplace to be economically meaningful, customers should bear the cost of the network of their choosing and avoid the cost of the networks rejected. Similarly, networks should make investment decisions based on whether they can recover costs from the customers that investment will attract.<sup>77</sup>

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<sup>70</sup>See Federal Communications Commission, *FCC Authorizes Nationwide Do-Not-Call Registry*, News, at 1 (rel. June 26, 2003). The rules establishing the nationwide Do-Not-Call Registry were recently upheld on appeal. See *Mainstream Marketing v. FTC*, 358 F.3d 1228 (10<sup>th</sup> Cir. 2004).

<sup>71</sup>See *IP-Enabled Services NPRM*, 19 FCC Rcd at 4877, 4879, paras. 18, 22.

<sup>72</sup>See *id.* at 4877, para. 18.

<sup>73</sup>*Id.*

<sup>74</sup>*Id.* at 4879, para. 22.

<sup>75</sup>*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9624-25, para. 37. We note, however, with respect to CMRS calls, that the Calling-Party's-Network-Pays (CPNP) regime typically does not assign the full cost to the originating carrier and caller because CMRS providers typically charge their own subscribers for incoming calls. *Id.* at 9624, n.54.

<sup>76</sup>*Id.* at 9624-25, para. 37.

<sup>77</sup>Further, if discrete calls are a *de minimis* source of costs, then the occurrence of such calls should not transfer significant costs between networks. That is, even if it makes sense as a policy matter for carriers to recover costs from competing carriers with whom they exchange traffic, rather than their own customers, a compensation approach based on average costs (rather than actual costs) would overcompensate the receiving carrier, thereby creating an arbitrage opportunity.

28. All of these developments warrant a re-evaluation of the existing regimes, and the record confirms the need for comprehensive reform efforts. In addition to the extensive record received in response to the *Intercarrier Compensation NPRM*, industry groups have been negotiating and developing comprehensive reform proposals for consideration in this proceeding.<sup>78</sup> Recognizing that the marketplace has changed significantly since these regimes were established, all of the proposals advocate replacing the existing rules with a more unified approach to intercarrier compensation.<sup>79</sup>

## **B. Goals of Intercarrier Compensation Reform**

29. Acknowledging that significant reform might be needed, the Commission requested comment in the *Intercarrier Compensation NPRM* on the appropriate goals of intercarrier compensation regulation in a competitive market and discussed specific goals that should be considered in evaluating a new regime.<sup>80</sup> In particular, the Commission asked about the role efficiency should play in developing intercarrier compensation regulations and whether a new regime should be technologically and competitively neutral.<sup>81</sup> The Commission also sought comment on whether, in evaluating a new regime, it should consider the degree of regulatory intervention required to implement the new rules, and on the weight to be given to these considerations.<sup>82</sup> Further, the Commission found it reasonable to consider the extent to which a new regime would resolve the problems identified with the current intercarrier compensation regimes.<sup>83</sup> Finally, the Commission sought comment on the possible advantages and

<sup>78</sup>See *infra* Section II.C.1 (discussing the specific proposals in the record).

<sup>79</sup>See generally Regulatory Reform Proposal of the Intercarrier Compensation Forum, October 5, 2004 (ICF Proposal), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab A (filed Oct. 5, 2004) (ICF Oct. 5 *Ex Parte* Letter); EPG Comprehensive Plan For Intercarrier Compensation Reform, Nov. 2, 2004, (EPG Proposal), attached to Letter from Glenn H. Brown, EPG Facilitator, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004); Alliance for Rational Intercarrier Compensation (ARIC) -- Fair Affordable Comprehensive Telecommunications Solution (FACTS), attached to Letter from Wendy Thompson Fast, President, Consolidated Companies and Ken Pfister, Great Plains Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45, 04-36, 99-68, and 96-98 (filed Oct. 25, 2004); Cost-Based Intercarrier Coalition, Sept. 2, 2004 (CBICC Proposal), attached to Letter from Richard Rindler, Counsel for the Cost-Based Intercarrier Compensation Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 2, 2004); Updated *Ex Parte* of Home Telephone Company, Inc. and PBT Telecom, Nov. 2, 2004 (Home/PBT Proposal), attached to Letter from Keith Oliver, Vice-President, Finance, Home Telephone Company, Inc. and Ben Spearman Vice President, Chief Regulatory Officer, PBT Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004); NASUCA Intercarrier Compensation Proposal, December 14, 2004, at 1 (NASUCA Proposal), attached to Letter from Philip F. McClelland, Senior Assistant Consumer Advocate, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. (filed Dec. 14, 2004); Western Wireless Intercarrier Compensation Reform Plan, December 1, 2004, at 6 (Western Wireless Proposal), attached to Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. (filed Dec. 1, 2004).

<sup>80</sup>*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9623-24, paras. 31-36.

<sup>81</sup>*Id.* at 9923-24, para. 33.

<sup>82</sup>*Id.* at 9924, para. 34.

<sup>83</sup>*Id.* at 9924, para. 35.

disadvantages of moving to a single, unified approach to intercarrier compensation.<sup>84</sup>

30. Commenters identify a number of important goals for consideration in adopting a new intercarrier compensation system. Many commenters either explicitly support the goal of promoting competition,<sup>85</sup> or suggest that competition is a critical goal of this proceeding.<sup>86</sup> Other commenters focus on the need to promote efficiency.<sup>87</sup> State commissions also suggest that any compensation scheme should maintain and promote universal service.<sup>88</sup> Other parties urge us to adopt a regime that minimizes the need for regulatory intervention and reduces transaction costs.<sup>89</sup> A number of commenters also ask the Commission to consider the goal of regulatory certainty,<sup>90</sup> and to adopt an approach that is legally supportable,<sup>91</sup> will result in reasonable and affordable end-user rates,<sup>92</sup> and will avoid rate shock.<sup>93</sup>

31. Although the commenters differ somewhat on the specific goals of an intercarrier compensation regime, some common themes emerge. Based on the record, we agree with commenters that any new approach should promote economic efficiency. As the Commission noted in the *Inter-carrier Compensation NPRM*, any new approach should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition.<sup>94</sup> Indeed, one of the Commission's most important policies is to promote facilities-based competition in the marketplace.<sup>95</sup> An approach that encourages the development of efficient competition is consistent with the goals of the 1996 Act, which was intended to both open markets to competitive entry and promote

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<sup>84</sup>*Id.* at 9924, para. 36.

<sup>85</sup>*See, e.g.,* Allegiance Comments at 6; Texas Counsel Comments at 51; WorldCom Comments at 4-6, 20; Taylor Reply at 4; Texas Counsel Reply at 8-9.

<sup>86</sup>*See, e.g.,* AT&T Comments at 1-2; AT&T Wireless Comments at 6-14; CompTel Comments at 2, 9-10, 16-21, 25-29; Florida Commission Comments at 2-3; Taylor Reply at 4.

<sup>87</sup>*See, e.g.,* Cable & Wireless Comments at 2; AT&T Reply at 2; Texas Counsel Reply at 8-9. *See also* ALLTEL Comments at 3 (supporting increased efficiency based on deregulation); AOL Comments at 8 (supporting the deployment of efficient network infrastructure).

<sup>88</sup>*See, e.g.,* California Commission Comments at 3; Texas Commission Comments at 6; Texas Counsel Reply at 8-9.

<sup>89</sup>*See, e.g.,* USTA Comments at 19; Level 3 Reply at 11.

<sup>90</sup>*See, e.g.,* Allegiance Comments at 6; Focal *et al.* Comments at 1-4; Texas Counsel Comments at 43, 50; Taylor Reply at 3.

<sup>91</sup>*See, e.g.,* Texas Counsel Comments at 51.

<sup>92</sup>*See, e.g.,* California Commission Comments at 3-4; Florida Commission Comments at 3; New York Commission Comments at 2; Texas Counsel Comments at 51; Texas Commission Comments at 6; Wisconsin Commission Comments at 4-5.

<sup>93</sup>*See, e.g.,* Alaska Commission Comments at 2-3; California Commission Comments at 3-4; CenturyTel Comments at 6-7; Florida Commission Comments at 3-4; Sprint Comments at 24-25; Taylor Reply at 4.

<sup>94</sup>*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9612, para. 2.

<sup>95</sup>*See, e.g. TELRIC NPRM*, 18 FCC Rcd at 19947, para. 3 (stating that facilities-based competition is "one of the central purposes of the Act").

increased competition in telecommunications markets.<sup>96</sup>

32. Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime.<sup>97</sup> This Commission remains committed to universal service, and we are particularly sensitive to the interests of rural and high-cost communities. Given the relationship between intercarrier compensation and universal service support, we recognize that reforms to the intercarrier compensation regime may warrant changes to universal service support mechanisms. Any proposal that would result in significant reductions in intercarrier payments should include a proposal to address the universal service implications, if any, of such reductions. In particular, many rural LECs collect a significant percentage of their revenue from interstate and intrastate access charges.<sup>98</sup> Because of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates. Indeed, the Commission would be particularly receptive to any plan that offers expanded choices and lower rates to rural consumers. For this reason, we seek comment in this item on universal service related issues raised by commenters, including the need to maintain reasonable and affordable end-user rates and the avoidance of rate shock.

33. We also agree that any new intercarrier compensation approach must be competitively and technologically neutral. Given the rapid changes in telecommunications technology, it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers. In addition, we favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic.<sup>99</sup> To the extent a proposed regime would preserve distinctions between types of carrier or types of traffic, such distinctions should be based on legitimate economic or technical differences, not artificial regulatory distinctions. An approach requiring minimal regulatory intervention and enforcement is consistent with the pro-competitive de-regulatory environment envisioned by the 1996 Act.<sup>100</sup> Consequently, proposals that rely on negotiated agreements between carriers might be preferable to regimes requiring detailed rules and regulations.

34. There are a number of additional criteria we must consider in assessing whether a particular proposal will help achieve the Commission's policy goals. For example, any proposal for reform of compensation mechanisms should address the impact of such changes on network interconnection rules. As the Commission made clear in the *Intercarrier Compensation NPRM* it is

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<sup>96</sup>See *Local Competition First Report and Order*, 11 FCC Rcd at 15505, para. 3.

<sup>97</sup>See 47 U.S.C. § 254(b).

<sup>98</sup>See *infra* para. 107 (according to NTCA, rural LECs receive on average 10 percent of their revenue from interstate access charges and 16 percent from intrastate access charges).

<sup>99</sup>For instance, it is possible to have a uniform rate for all types of traffic, but have that rate apply differently depending on the traffic type.

<sup>100</sup>See *Local Competition First Report and Order*, 11 FCC Rcd at 15505, 15512, paras. 3, 21.

important to have clear rules regarding how and where carriers interconnect and the allocation of responsibilities for any facilities needed to connect two networks.<sup>101</sup>

35. In addition, any reform proposal should explain the Commission's legal authority to adopt it. The Commission clearly has authority under section 201 to adopt or modify compensation mechanisms that apply to jurisdictionally interstate traffic, and it clearly has authority to modify the pricing methodology that applies to reciprocal compensation under section 252(d)(2). Any proposal that contemplates reform of intrastate mechanisms, however, must include an explanation of the Commission's legal authority to implement the proposal.

36. Finally, there will be numerous implementation issues associated with any significant reform of intercarrier compensation mechanisms. As just one example, adoption of a unified regime will require the Commission to decide whether compensation, if any, should be pursuant to tariffs (as in the access charge regime) or agreements (as in the reciprocal compensation regime). Moreover, to the extent a proposal includes significant changes in the level of compensation carriers might receive, we would expect to see a detailed transition plan that will give carriers time to adjust their business plans.

### C. Specific Proposals for Intercarrier Compensation Reform

37. Having concluded that there is an urgent need to reform the existing intercarrier compensation rules, we now turn to the question of what reforms best serve the goals we have identified. Many parties advocate a unified regime, but there is little consensus as to what type of unified regime we should adopt.<sup>102</sup> In the *Intercarrier Compensation NPRM*, the Commission re-evaluated the rationale for the traditional CPNP regimes and identified new approaches to intercarrier compensation, including a bill-and-keep approach.<sup>103</sup> Under a bill-and-keep approach, neither of the interconnecting networks charges the other network for terminating traffic that originates on the other carrier's network.<sup>104</sup> Rather, "each network recovers from its own end users the cost of both originating traffic delivered to the other network, and terminating traffic received from the other network."<sup>105</sup>

38. The *Intercarrier Compensation NPRM* generated considerable discussion of bill-and-keep.<sup>106</sup> Many commenters, including rural LECs, have substantial concerns about moving to a bill-and-

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<sup>101</sup>See *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9650-52, paras. 112-14 (seeking comment on the interplay between the network interconnection rules and the reciprocal compensation rules).

<sup>102</sup>See, e.g., ALLTEL Comments at iii; AOL Comments at 3; AT&T Comments at 1, 12; BellSouth Comments at 2; Cable & Wireless Comments at 8; Cbeyond Comments at 7; CompTel Comments at 5; Global NAPs Comments at ii, 20; GSA Comments at 6; Illinois Commission Comments at 1, 3; Level 3 Comments at 3-4; Mid Missouri Cellular Comments at ii; Qwest Comments at 3; Texas Counsel Comments at 10; Time Warner Comments at 4; Wisconsin Commission Comments at 3; WorldCom Comments at 2.

<sup>103</sup>*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9619-24, paras. 19-36.

<sup>104</sup>*Local Competition First Report and Order*, 11 FCC Rcd at 16045, para. 1096.

<sup>105</sup>*Id.*

<sup>106</sup>Attached as Appendix C is a staff analysis of the record on bill-and-keep. The views expressed in this staff analysis do not represent the views of, and are not endorsed by, the Commission.

keep approach and support retaining a CPNP regime.<sup>107</sup> Other commenters urge the Commission to maintain but reform the existing CPNP approach to intercarrier compensation.<sup>108</sup> These commenters contend that a reformed CPNP regime is economically efficient and easier to implement than a bill-and-keep approach.<sup>109</sup> Some argue that the Commission has failed to identify a systemic failure in the CPNP system<sup>110</sup> or that any failures of the CPNP approach are attributable to departures from cost-based rates rather than to the approach itself.<sup>111</sup> Other commenters claim that the record fails to support a departure from the Commission's previous conclusions concerning bill-and-keep.<sup>112</sup>

39. In parallel with the Commission's consideration of the record developed in response to the *Inter-carrier Compensation NPRM*, various industry groups have been negotiating proposals for comprehensive reform of federal and state intercarrier compensation mechanisms. These negotiations have resulted in proposals from a number of groups – the Inter-carrier Compensation Forum (ICF), the Expanded Portland Group (EPG), the Alliance for Rational Inter-carrier Compensation (ARIC), the Cost-Based Inter-carrier Compensation Coalition (CBICC), and two rural LECs, Home Telephone Company and PBT Telecom (Home/PBT).<sup>113</sup> In addition, we discuss a statement of principles submitted by CTIA as well as a specific reform proposal filed by Western Wireless.<sup>114</sup> We also discuss a proposal by NASUCA that would reduce certain intercarrier compensation rates.<sup>115</sup> Moreover, NARUC has developed a set of principles that it believes should guide any consideration of intercarrier compensation reform.<sup>116</sup> Below, we provide an overview of these proposals and principles. We then seek comment on

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<sup>107</sup>See, e.g., GVNW Comments at 3-13; ICORE Comments at 6-8; Minnesota Independent Coalition Comments at 2-10; MSTG Comments at 9-12; NTCA Comments at 5-13; Oklahoma Rural Telephone Coalition Comments at 15-45; RICA Comments at 4-10; United Utilities Comments at 4; Western Alliance Comments 23-27; ALLTEL Reply at 2-3; NECA Reply at 3-4, 6-8; TCA Reply at 3-4.

<sup>108</sup>See, e.g., Ad Hoc Comments at 1, 10; Allegiance Comments at 10-13; AT&T Comments at 21-29; CompTel Comments at 18-21; Focal *et al.* Comments at 46; MD-OPC Comments at 20-21; MECA Comments at 38.

<sup>109</sup>See AT&T Comments at 21-29.

<sup>110</sup>See CompTel Comments at 9.

<sup>111</sup>See, e.g., Ad Hoc Comments at 2; AT&T Comments at 13-14; CompTel Comments at 9; AT&T Reply at 11.

<sup>112</sup>See, e.g., Allegiance Comments at 13-16; Focal *et al.* Reply at 4-8; NASUCA Reply at 10-11. In the *Local Competition First Report and Order*, the Commission concluded that, as long as the costs of terminating traffic are positive, bill-and-keep arrangements are not economically efficient. *Local Competition First Report and Order*, 11 FCC Rcd at 16055, para. 112.

<sup>113</sup>See *supra* note 79.

<sup>114</sup>See Letter from Steve Largent, President/CEO, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 (filed Nov. 29, 2004) (CTIA Nov. 29 *Ex Parte* Letter); Western Wireless Proposal at 6.

<sup>115</sup>See NASUCA Proposal at 1.

<sup>116</sup>The National Association of Regulatory Utility Commissioners Study Committee on Inter-carrier Compensation – Goals for a New Inter-carrier Compensation System (May 5, 2004) (NARUC Principles). This document is available on NARUC's web site at [http://www.naruc.org/associations/1773/files/intercarriercompgoals\\_whitepaper04.pdf](http://www.naruc.org/associations/1773/files/intercarriercompgoals_whitepaper04.pdf) (Visited February 14, 2005).

specific questions concerning discrete aspects of these comprehensive reform plans.

### 1. Description of Industry Proposals<sup>117</sup>

40. *Intercarrier Compensation Forum (ICF)*. The ICF is a diverse group of nine carriers that represent different segments of the telecommunications industry.<sup>118</sup> The ICF has developed a comprehensive plan for reforming current network interconnection, intercarrier compensation, and universal service rules. With respect to network interconnection, the ICF plan establishes default technical and financial rules that generally require an originating carrier to deliver traffic to the "Edge" of a terminating carrier's network.<sup>119</sup> The designated network Edge must accept all kinds of public switched telephone network (PSTN) traffic, must allow other carriers to interconnect using multiple methods, and must consist of certain types of facilities, among other things.<sup>120</sup> Under this proposal, each carrier must have at least one Edge in every LATA where it needs to receive traffic; however, a carrier having no network within a LATA may designate another carrier to provide the Edge function.<sup>121</sup> A modified version of the Edge proposal applies to eligible rural carriers, called "Covered Rural Telephone Companies" (CRTC), which have no obligation to deliver originating traffic beyond the boundaries of the study area in which a call originates.<sup>122</sup>

41. With respect to compensation, the ICF plan would reduce per-minute termination rates from existing levels to zero over a six-year period.<sup>123</sup> Specifically, the compensation rate for interstate access, intrastate access, and most other types of non-access traffic<sup>124</sup> would be reduced in equal steps

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<sup>117</sup>The summaries provided herein do not attempt to capture every aspect of the detailed proposals submitted in this proceeding. Interested parties are strongly encouraged to review these proposals in their entirety.

<sup>118</sup>The nine carriers are AT&T, GCI, Global Crossing, Iowa Telecom, Level 3, MCI, SBC, Sprint and Valor. ICF Oct. 5 *Ex Parte* Letter at 1.

<sup>119</sup>ICF Proposal at 3-9. Specific obligations depend on whether a carrier operates a hierarchical network or a non-hierarchical network. *See id.* at 9-13.

<sup>120</sup>*Id.* at 4. "Edges" may be access tandems, end offices, wireless MSCs, points of presence (POPs), or "trunking media gateways." *Id.* at 6-7.

<sup>121</sup>*Id.* In addition, the proposed rules limit the number of a carrier's Edges to the lower of the total number of incumbent LEC access tandems in a LATA or the number of the carrier's network-defined Edges in the LATA. *Id.* These rules are intended to "prevent a carrier from proliferating Edges in order to shift transport responsibility from itself to other carriers, and ensure that an interconnecting carrier can choose direct interconnection." *Id.* at 5.

<sup>122</sup>*Id.* at 19-25. A CRTC may designate an end office within its study area or an access tandem outside its study area as an Edge. *Id.* at 19-20.

<sup>123</sup>*Id.* at 31.

<sup>124</sup>Although not entirely clear, "non-access" traffic for purposes of the ICF proposal appears to include ISP-bound traffic and section 251(b)(5) traffic (including foreign exchange (FX) or virtual FX traffic provided on a non-access basis), among other things. *Id.* at 40-41. Although the ICF touts a uniform rate approach, we note that its detailed proposal contains numerous exceptions and different transition rates and rules for some types of non-access traffic. *See* ICF Proposal at 40-48.

over four years to a unified rate of \$.000175 per MOU.<sup>125</sup> This rate is further reduced in the fifth year of the transition to \$.0000875 per MOU and finally eliminated a year later.<sup>126</sup> The plan also includes a settlement proposal to address existing intercarrier compensation disputes between CTRCs and CMRS providers.<sup>127</sup>

42. Revenue eliminated as a result of the transition to bill-and-keep under the ICF plan would be replaced by a combination of end-user charges and a new universal service support mechanism.<sup>128</sup> As intercarrier payments decline, the cap on the subscriber line charge (SLC) would increase in equal steps from the current level of \$6.50 to \$10.00 in areas served by non-rural carriers and up to \$9.00 in areas served by CTRCs.<sup>129</sup> In addition, the ICF plan permits SLC pricing flexibility for price cap incumbent LECs, subject to certain consumer protection safeguards.<sup>130</sup> The ICF plan also includes a "more measured transition" for CRTC customers and gives CTRCs the option to increase the residential monthly SLC cap by two additional \$.50 annual increments beginning July 1, 2010.<sup>131</sup>

43. The ICF proposal includes two new universal service mechanisms to provide explicit support for amounts that otherwise are not recoverable under the plan. One mechanism, the Intercarrier Compensation Recovery Mechanism (ICRM), is available to non-rural incumbent LECs and all competitive eligible telecommunications carriers (CETCs) on a per-line basis in non-CRTC areas.<sup>132</sup> The other mechanism, the Transitional Network Recovery Mechanism (TNRN), is available only to CTRCs and certain eligible CETCs.<sup>133</sup> Under this mechanism, rate-of-return CTRCs would receive support based on their revenue requirement, without regard to the number of lines they serve.<sup>134</sup>

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<sup>125</sup>*Id.* at 31-33, 42-47. The ICF plan also includes new transit service, interconnection transport, and CRTC terminating transport rates that replace the existing transport rate structure. *Id.* at 25-31, 36-40.

<sup>126</sup>*Id.* at 37. In the fifth year of the plan, the ICF proposal calls for a further proceeding to evaluate whether or not the timing of the rate reductions should be modified. *Id.* at 82

<sup>127</sup>*Id.* at 46-47. The proposed settlement provides clarification as to when reciprocal compensation applies to traffic exchanged between CMRS providers and CTRCs and establishes default reciprocal compensation rates that apply in the absence of an agreement between the parties. *Id.*

<sup>128</sup>*Id.* at 48.

<sup>129</sup>*Id.* at 60-63. *See also* Regulatory Reform Proposal of the Intercarrier Compensation Forum, August 13, 2004 (ICF August Proposal), attached to Letter from Gary Epstein, Counsel for the Intercarrier Compensation Forum, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab 3, at 27 (filed Aug. 16, 2004) (providing a comprehensive overview of the SLC transition under the ICF plan).

<sup>130</sup>ICF Proposal at 63-68.

<sup>131</sup>*Id.* at 62-63.

<sup>132</sup>*Id.* at 69-73. By default, ICRM is available as a uniform, per-line amount to all eligible lines. *Id.* at 69. Alternatively, a recipient incumbent LEC may establish a Zone Disaggregation Plan or a Residential Targeting Plan. *Id.* at 69-72.

<sup>133</sup>*Id.* at 73. TNRN support may be disaggregated under the existing Commission rules governing disaggregation for rural carriers. *Id.*

<sup>134</sup>*Id.* at 54-58, 73.

44. Finally, the ICF plan includes several changes to existing universal service support mechanisms.<sup>135</sup> These changes include a modification to the rural high cost loop support and the safety valve support mechanisms.<sup>136</sup> In addition, the proposal provides an option for certain price cap CTRCs to receive support under the non-rural, model-based high cost mechanism.<sup>137</sup> The existing per-line universal service support amount would remain portable to eligible competitive carriers.<sup>138</sup> The ICF plan also prescribes a single contribution methodology used to collect funding for both the new and existing universal service support mechanisms.<sup>139</sup>

45. *Expanded Portland Group (EPG)*. The EPG is a group of small and mid-sized rural LECs (and consulting organizations serving rural carriers) that came together to develop a proposal distinct from a bill-and-keep mechanism.<sup>140</sup> Stage one of the EPG proposal is intended to address more immediate issues arising under the current regimes, including unidentified or “phantom” traffic, the scope of the ESP exemption, and the termination of traffic in the absence of agreements between carriers.<sup>141</sup> To address these issues, the EPG plan would implement “truth-in-labeling” guidelines, establish default termination rules and rates, and eliminate the ESP exemption for ISPs terminating traffic to the PSTN.<sup>142</sup> ISPs would be permitted to continue to use flat-rated business lines to receive calls from their customers, however.<sup>143</sup>

46. In the second stage of the EPG plan, all per-minute rates would be set at the level of interstate access charges and a new Access Restructure Charge (ARC) would be implemented to make up any revenue shortfall.<sup>144</sup> The EPG proposes that a national benchmark price level of \$21.07 per line be established for computing the eligibility for ARC funding.<sup>145</sup> Carriers with rates below the national

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<sup>135</sup>See *id.* at 75-81.

<sup>136</sup>*Id.* at 80-81.

<sup>137</sup>*Id.* at 81.

<sup>138</sup>*Id.* at 80.

<sup>139</sup>*Id.* at 75-78 (describing a “unit-based” assessment of working telephone numbers and non-switched, high-speed, dedicated network connections).

<sup>140</sup>EPG Proposal at 1-2.

<sup>141</sup>*Id.* at 5-6, 15-20.

<sup>142</sup>*Id.*

<sup>143</sup>*Id.* at 5, 20.

<sup>144</sup>*Id.* at 7, 21-22. Under the EPG plan, the ARC initially equals the residual intercarrier “revenue requirement” offset by net intercarrier revenues, universal service support, and subscriber line charges. *Id.* at 26-27. Calculation of the “intercarrier revenue requirement” is done using the current process laid out in the Commission’s rules. *Id.*

<sup>145</sup>*Id.* at 7, 23-26. Thus, a company with basic rate plus SLC of less than \$21.07 would not qualify for full ARC recovery for their intercarrier revenue reductions. *Id.* at 25. The \$21.07 per line benchmark is the sum of the average urban residential rate and the average residence and single line SLC. *Id.* at 24 (citing rates from the Commission’s *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau*, at Table 1.2 (rel. July 1, 2004)).

benchmark would be subject to reduced ARC funding they otherwise would qualify for.<sup>146</sup> The ARC would be a capacity-based charge calculated by NECA and bulk-billed to all carriers based on working telephone numbers, but distributed only to those carriers that lose access charge revenue, *i.e.*, wireline LECs.<sup>147</sup> The EPG asserts that it is not a universal service mechanism and therefore need not be portable to wireless carriers.<sup>148</sup>

47. In the final stage of the EPG plan, per-minute access charges are converted to a capacity-based "Port and Link" structure.<sup>149</sup> Under the EPG plan, carriers would purchase "Ports" to provide a connection into a local carriers network and "Links" to connect the two networks.<sup>150</sup> The Port and Link charges would be set to recover the average equivalent interstate per minute rate with rate banding.<sup>151</sup> Initially, the EPG plan would convert only dedicated switched transport services (*i.e.*, direct interconnection) to a capacity-based structure.<sup>152</sup> Common switched transport services (*i.e.*, indirect interconnection) would remain on a per MOU basis with the option of converting to a capacity-based rate structure.<sup>153</sup> These Port and Link charges would not apply to local traffic, including Extended Area Service (EAS), and ISP-bound traffic.<sup>154</sup>

48. *Alliance for Rational Inter-carrier Compensation (ARIC) – Fair Affordable Comprehensive Telecom Solution (FACTS)*. ARIC is comprised of small telecommunications companies providing service in rural, high-cost areas.<sup>155</sup> The FACTS plan developed by ARIC calls for a unified per-minute rate for all types of traffic that would be capped at a level based on a carrier's unseparated, interoffice embedded costs.<sup>156</sup> Specifically, the unified compensation rates for rate-of-return carriers would be calculated by dividing the appropriate interoffice, traffic-sensitive, unseparated, embedded

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<sup>146</sup>*Id.* at 24-25. Under the EPG plan, carriers subject to reduced ARC funding could either request a basic rate increase from state commissions or obtain additional revenue from individual end users under their access tariffs. *Id.* at 25.

<sup>147</sup>*Id.* at 7, 22.

<sup>148</sup>*Id.* at 22-23.

<sup>149</sup>*Id.* at 7-8, 29-33.

<sup>150</sup>*Id.* at 7, 30. It is unclear whether all carriers, or only LECs, are entitled to assess Port and Link charges on other carriers.

<sup>151</sup>*Id.* at 31. Link charges would be set equal to the charge for the equivalent interstate special access service, and rate banding may be necessary to recognize the high cost of transport in rural areas. *Id.*

<sup>152</sup>*Id.* at 32.

<sup>153</sup>*Id.* The EPG states that many small LECs connect with most other carriers using common transport arrangements. *Id.* at 31.

<sup>154</sup>*Id.* at 32-33. Per minute reciprocal termination charges would apply to local or EAS traffic, and the existing compensation rules governing the compensation for ISP-bound traffic would remain in effect. *Id.*

<sup>155</sup>ARIC Proposal at 1.

<sup>156</sup>*Id.* at 2. Under the FACTS plan, special access rates would be unified at interstate levels at which time carriers will have an opportunity to revise and file unified cost-based rates for both jurisdictions. *Id.* at 44.